

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

JAMES C. WINDING

PLAINTIFF

VS.

CIVIL ACTION NO. 3:13-cv-289-CWR-FKB

C. RUTLEDGE, et al.

DEFENDANTS

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court pursuant to the Report and Recommendation of United States Magistrate Judge F. Keith Ball. The Magistrate Judge's Report and Recommendation notes that the Plaintiff, James C. Winding, had previously been ordered to show cause as to why Defendants Rutledge and Trinity Food Service should not be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. *See* Docket No. 143. As stated by the Magistrate Judge, the Plaintiff responded to the order of the court, but still failed to demonstrate that these Defendants had been served with process in his response. As a result, the Magistrate Judge recommended that the case be dismissed, *see id.*, and the Plaintiff timely filed his objection. *See* Docket Nos. 145 and 146.

This Court, having considered the Plaintiff's written objections, hereby adopts the Magistrate Judge's Report and Recommendation as the order of this Court. The Court finds that the Plaintiff has failed to provide adequate proof that these Defendants were properly served with the Summons and Complaint. *See* Fed. R. Civ. P. 4(l). Although Plaintiff argues that service on the secretary to the warden was sufficient service on these Defendants, that is not the case. *See id.* at 4(e), (h). For these reasons, the Report and Recommendation is granted and the Plaintiff's objections are overruled. Defendants Rutledge and Trinity Food Service are dismissed from this action without prejudice.

Furthermore, having determined that these Defendants are dismissed from this action, the Court denies the Plaintiff's Motion for Default Judgment, Docket No. 127.

SO ORDERED, this the 23rd day of April, 2015.

s/ Carlton W. Reeves

UNITED STATES DISTRICT JUDGE
